

DOCKETED
USNRC

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

55 JAN 23 A10:13

Before the Atomic Safety and Licensing Board

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
Philadelphia Electric)
Company)
)
(Limerick Generating)
Station, Units 1)
and 2))

Docket Nos. 50-352, 02
50-353 02

MEMORANDUM IN SUPPORT OF RESPONSE
OF THE COMMONWEALTH OF PENNSYLVANIA TO
GRATERFORD INMATES' DECEMBER 20, 1984 MOTION

I. Introduction

On December 30, 1984, the Commonwealth filed its response to the Graterford inmates' December 20, 1984 motion for full disclosure of the Graterford radiological emergency response plan. In that response, the Commonwealth requested until January 18, 1985 to file a Memorandum in support of its response.

The Applicant and the NRC Staff each filed responses to the Graterford inmates' motion. Both Applicant and NRC Staff questioned the relief requested by the inmates and recommended further action be taken prior to a Board ruling on the motion. In particular, the NRC Staff recognized that the protection to be accorded an evacuation plan for a maximum security correctional institution is, in fact, analogous to the extent of protection required by NRC regulation for a site security plan. Such regulations, however, and case law which interprets these rules allow

D 503

for security plan disclosure under certain conditions. In this instance, the Commonwealth believes there should be no further disclosure of the Graterford plan, and asks that this Board take the following discussion into consideration in ruling on the inmates' motion.

II. Discussion

After exhaustive legal research, it appears to the Commonwealth that the issue before this Board regarding the disclosure of an evacuation plan for a prison is a case of first impression. There are, however, numerous decisions by the United States Supreme Court which recognize the difficulty inherent in prison administration and, therefore, instruct that wide-ranging deference be accorded the decisions of prison administrators.

In Bell v. Wolfish, 441 U.S. 520 (1979), the Supreme Court clearly outlined its opinion as to the deference to be accorded the decisions of prison administrators. The Court said:

Prison officials must be free to take appropriate action to ensure the safety of inmates and corrections personnel and to prevent escape or unauthorized entry Prison administrators, therefore, should be accorded wide-ranging deference in the adoption and execution of policies and practices that, in their judgment, are needed to preserve internal order and discipline and to maintain institutional security. Such considerations are particularly within the province and professional expertise of correctional officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

441 U.S. at 547-48. An example of the deference accorded prison officials may be found in Bell where the Court was asked to find that the strip search policy of the particular bureau of prisons involved was an illegal search and seizure. The prison bureau in this case required that inmates expose their body cavities for visual inspection as part of a strip search conducted after every contact visit with a person from outside the institution. Even though there was only one instance in the history of the institution in question where contraband was actually found during such a search, the corrections officials had testified that the cavity searches were necessary not only to discover weapons, drugs and other contraband that might be entering the institution but also to deter smuggling of such items into the prison. Upon balancing the need for security against the intrusion suffered by the inmates, the Court upheld the strip search procedure as constitutional, in recognition of the views of the corrections professionals.

In Procunier v. Martinez, 416 U.S. 396 (1974), the Court reviewed institutional rules and regulations which prohibited receipt or mailing by inmates of letters that contained language which unduly complained about prison conditions or magnified grievances. The institution also prohibited correspondence that was lewd, obscene, defamatory or otherwise inappropriate. Although in this instance the Court found the specific regulations at issue too restrictive, it approved the censorship of prisoner mail where a "regulation

authorizing mail censorship furthers one or more of the substantial governmental interests of security, order and rehabilitation" and limited First Amendment freedoms "no greater than necessary or essential to the protection of the particular governmental interest involved." 416 U.S. at 413. In reaching its decision the Court explicitly recognized that prison administrators face great difficulties in execution of their duties, and courts should accordingly defer:

prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to the extent that human nature and inadequate resources allow, the inmates placed in their custody. The herculean obstacles to effective discharge of these duties are too apparent to warrant explication. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. . . . courts are ill-equipped to deal with the increasingly urgent problems of prison administration and reform.

Id. at 404-05. See also Hewitt v. Helms, 459 U.S. 460 (1983); Jones v. North Carolina Prisoners Labor Union, 433 U.S. 119 (1977); Pell v. Procunier, 417 U.S. 817 (1974); Meachum v. Fano, 427 U.S. 215 (1976); Cruz v. Beto, 405 U.S. 319 (1972).

The common thread which runs through the rulings cited and discussed above is that corrections is a highly specialized profession, and even the U.S. Supreme Court will not intrude into the corrections area unless it finds a clear violation of the constitutional rights of inmates. For example,

even where the most fundamental right as freedom from unreasonable search and seizure is involved, the Court will permit even a highly intrusive search so long as there is justification based on the corrections professional's judgment of the need for security and order in the institution.

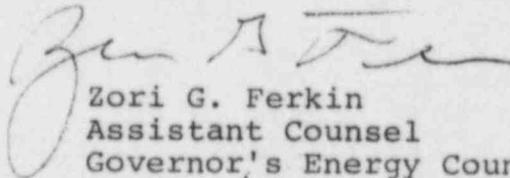
While the officials of the Pennsylvania Bureau of Correction do not claim to be experts in the development of evacuation plans relating to nuclear incidents, the Bureau in fact has more experience in this particular area than any one organization or individual. The Bureau has of necessity had to plan for the evacuation of its State Correctional Institution at Camp Hill in response to the Three Mile Island nuclear incident. The Bureau has received a great deal of advice and assistance in its evacuation plan development from the Pennsylvania Emergency Management Agency (PEMA), clearly an expert organization in the emergency planning and evacuation response arena. Only with the knowledge and experience of the entire correctional system in the Commonwealth of Pennsylvania, knowing exactly what resources are available at each correctional institution and having experience with the particular physical plants, as well as institutional personnel, is it possible to develop a workable evacuation plan. As stated in the Affidavit of Commissioner Jeffes previously provided this Board, only individuals inside the Pennsylvania Bureau of Correction have this expertise. Review of the plan by someone outside the Bureau would thus be futile. Jeffes Affidavit at 5. Consistent with the rulings of the U.S.

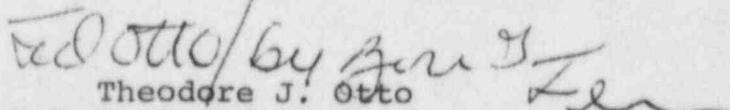
Supreme Court with regard to the opinions and policies of corrections officials, this Board should defer to the policy of the Pennsylvania Bureau of Correction and the opinion of Commissioner Jeffes with regard to the need for the strictest security and protection of the Graterford plan.

III. Conclusion

For the foregoing reasons and the arguments set forth in the Commonwealth's Request for Non-Disclosure dated December 13 and Response to the Graterford Inmates' Motion dated December 30, 1984, the Commonwealth respectfully requests this Board to deny the motion of the Graterford inmates for full disclosure of the Graterford radiological emergency response plan. The Commonwealth requests that there be no further disclosure of said plan to either inmates or their counsel.

Respectfully submitted,


Zori G. Ferkin
Assistant Counsel
Governor's Energy Council


Theodore J. Otto
Assistant Counsel
Bureau of Correction

Dated; January 18, 1985

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
PHILADELPHIA ELECTRIC COMPANY) Docket Nos. 50-352
) 50-353
(Limerick Generating Station,)
Units 1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Memorandum in Support of the Commonwealth of Pennsylvania to Graterford Inmates' December 20, 1984 Motion were served on the following by United States first class mail on the 18th day of January 1985:

Helen F. Hoyt
Administrative Judge
Atomic Safety and Licensing
Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dr. Richard F. Cole
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Troy B. Conner, Esq.
Conner and Wetterhahn, P.C.
1747 Pennsylvania Ave., N.W.
Washington, DC 20006

Dr. Jerry Harbour
Administrative Judge
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing Board
Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Atomic Safety and Licensing
Appeal Panel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Benjamin H. Vogler, Esq.
Counsel for NRC Staff
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Robert L. Anthony
Friends of the Earth of the
Delaware Valley
P. O. Box 186
103 Vernon Lane

Joseph H. White, III
15 Ardmore Avenue
Ardmore, PA 19003

Charles W. Elliott, Esq.
Brose and Postwistilo
325 N. 10th Street
Easton, PA 18042

Steven P. Hershey, Esq.
Community Legal Services, Inc.
Law Center West
5219 Chestnut Street
Philadelphia, PA 19139

Thomas Gerusky, Director
Bureau of Radiation Protection
Dept. of Environmental Resources
5th Fl., Fulton Bank Bldg.
Third and Locust Streets
Harrisburg, PA 17120

Jay M. Gutierrez, Esq.
U.S. Nuclear Regulatory Commission
Region I
631 Park Avenue
King of Prussia, PA 19406

Timothy R.S. Campbell
Director
Dept. of Emergency Services
14 East Biddle Street
West Chester, PA 19380

Philadelphia Electric Company
Attn: Edward G. Bauer, Jr.
Vice President & General Counsel
2301 Market Street
Philadelphia, PA 19101

Angus Love, Esq.
101 East Main Street
Norristown, PA 19104

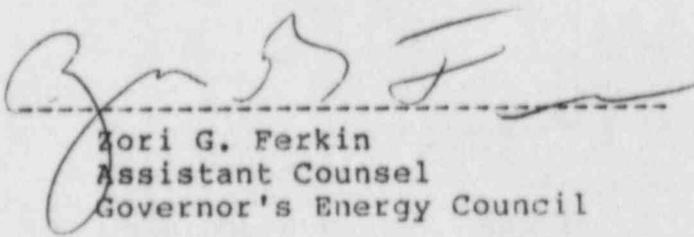
Phyllis Zitzer
Limerick Ecology Action
P. O. Box 761
Pottstown, PA 19464

*Director, Pennsylvania Emergency
Management Agency
B-151, Transportation & Safety Bldg
Harrisburg, PA 17120

Martha W. Bush, Esq.
Kathryn S. Lewis, Esq.
City of Philadelphia
Municipal Services Bldg.
15th and JFK Blvd.
Philadelphia, PA 19107

Spence W. Perty, Esq.
Associate General Counsel
Federal Emergency Management Agency
500 C Street, SW, Rm. 840
Washington, DC 20472

*David Wersan, Esq.
Assistant Consumer Advocate
Office of Consumer Advocate
1425 Strawberry Square
Harrisburg, PA 17120



Zori G. Ferkin
Assistant Counsel
Governor's Energy Council

Date: January 18, 1985